
WELSH STATUTORY INSTRUMENTS

2013 No. 2591

**The Food Additives, Flavourings, Enzymes and
Extraction Solvents (Wales) Regulations 2013**

PART 1

Introductory

Title, application and commencement

1. The title of these Regulations is the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013, they apply in relation to Wales and come into force on 31 October 2013.

Interpretation

2.—(1) In these Regulations —

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“Directive 2009/32” (“*Cyfarwydddeb 2009/32*”) means Directive [2009/32/EC](#) of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients⁽¹⁾;

“Regulation 2065/2003” (“*Rheoliad 2065/2003*”) means Regulation [\(EC\) No 2065/2003](#) of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods⁽²⁾;

“Regulation 1332/2008” (“*Rheoliad 1332/2008*”) means Regulation [\(EC\) No 1332/2008](#) of the European Parliament and of the Council on food enzymes⁽³⁾;

“Regulation 1333/2008” (“*Rheoliad 1333/2008*”) means Regulation [\(EC\) No 1333/2008](#) of the European Parliament and of the Council on food additives⁽⁴⁾, as read with —

(a) Commission Regulation (EU) No 1129/2011 amending Annex II to Regulation [\(EC\) No 1333/2008](#) of the European Parliament and of the Council by establishing a Union list of food additives⁽⁵⁾,

(b) Commission Regulation (EU) No 1130/2011 amending Annex III to Regulation [\(EC\) No 1333/2008](#) of the European Parliament and of the Council on food additives by

(1) OJNo. L141, 6.6.2009, p.3. This instrument was amended by Commission Directive 2010/59/EU (OJ No. L225, 27.8.2010, p.10).

(2) OJ No. L309, 26.11.2003, p.1. This instrument was amended by Regulation [\(EC\) No 596/2009](#) of the European Parliament and of the Council (OJ No. L188, 18.7.2009, p.14).

(3) OJ No. L354, 31.12.2008, p.7. This instrument was last amended by Commission Regulation (EU) No 1056/2012 (OJ No. L313, 13.11.2012, p.9).

(4) OJ No. L354, 31.12.2008, p.16. This instrument was last amended by Commission Regulation (EU) No. 510/2013 (OJ No. L150, 4.6.2013, p.17).

(5) OJ No. L295, 12.11.2011, p.1.

establishing a Union list of food additives for use in food additives, food enzymes, food flavourings and nutrients⁽⁶⁾, and

- (c) Commission Regulation (EU) No 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council⁽⁷⁾;

“Regulation 1334/2008” (“*Rheoliad 1334/2008*”) means Regulation (EC) No 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods⁽⁸⁾, as read with Commission Regulation (EU) No 873/2012 on transitional measures concerning the Union list of flavourings and source materials set out in Annex I to Regulation (EC) 1334/2008 of the European Parliament and of the Council⁽⁹⁾;

“authorised officer” (“*swyddog awdurdodedig*”) means any person who is authorised in writing, either generally or specially, by a food authority to act in matters arising under these Regulations;

“food authority” (“*awdurdod bwyd*”) means —

- (d) a county council; and
(e) a county borough council;

“the EU Regulations” means Regulation 2065/2003, Regulation 1332/2008, Regulation 1333/2008 and Regulation 1334/2008.

(2) Other expressions used in these Regulations and in the EU instruments listed in paragraph (4) have the same meaning in these Regulations as they do in those instruments.

(3) Any reference in these Regulations to an Article of or Annex to any of the EU instruments listed in paragraph (4) is a reference to that Article or Annex as amended from time to time.

(4) The EU instruments are Directive 2009/32, Regulation 2065/2003, Regulation (EC) No 1331/2008 of the European Parliament and of the Council establishing a common authorisation procedure for food additives, food enzymes and food flavourings⁽¹⁰⁾, Regulation 1332/2008, Regulation 1333/2008 and Regulation 1334/2008.

(5) Where any functions under the Act are assigned —

- (a) by an order under section 2 of the Public Health (Control of Disease) Act 1984⁽¹¹⁾, to a port health authority; or
(b) by an order under section 6 of the Public Health Act 1936⁽¹²⁾, to a joint board for a united district;

any reference in these Regulations to a food authority is to be construed, so far as relating to those functions, as a reference to the authority to which they are so assigned.

⁽⁶⁾ OJ No. L295, 12.11.2011, p.178.

⁽⁷⁾ OJ No. L83, 22.3.2012, p.1. This instrument was last amended by Commission Regulation (EU) No. 497/2013 (OJ No. L143, 30.5.2013, p.20).

⁽⁸⁾ OJ No. L354, 31.12.2008, p.34. This instrument was last amended by Commission Implementing Regulation (EU) No 545/2013 (OJ No. L163, 15.6.2013, p.15).

⁽⁹⁾ OJ No. L267, 2.10.2012, p.162.

⁽¹⁰⁾ OJ No. L354, 31.12.2008, p.1. This instrument is implemented by Commission Regulation (EU) No. 234/2011 (OJ No. L64, 11.03.2011, p.15) and that Regulation has been amended by Commission Implementing Regulation (EU) No. 562/2012 (OJ No. L168, 28.06.2012, p.2).

⁽¹¹⁾ 1984 c.22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990 (1990 c.16).

⁽¹²⁾ 1936 c.49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.

PART 2

Food additives, flavourings and enzymes

Offence of contravening EU requirements on food additives

3. Any person who contravenes, or who uses or places on the market a product that fails to comply with, any of the provisions of Regulation 1333/2008 specified in the first column of Table 1 of Schedule 1, as read with transitional measures contained in or to be read with that Regulation, commits an offence.

Offence of contravening EU requirements on flavourings, including smoke flavourings

4. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 1334/2008 specified in the first column of Table 1 of Schedule 2, as read with Article 4 (flavouring substances under evaluation) of Commission Implementing Regulation (EU) No 872/2012 adopting the list of flavouring substances provided for by Regulation (EC) No 2232/96 of the European Parliament and of the Council⁽¹³⁾ and with transitional measures contained in or to be read with Regulation 1334/2008, commits an offence.

5. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 2065/2003 specified in the first column of Table 1 of Schedule 3 commits an offence.

Offence of contravening EU requirements on food enzymes

6. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 1332/2008 specified in the first column of Table 1 of Schedule 4, as read with Articles 18 and 24 (transitional measures), commits an offence.

Improvement notices – application of subsections (1) and (2) of section 10 of the Food Safety Act 1990

7.—(1) Subsections (1) and (2) of section 10 of the Act (improvement notices) apply for the purposes of these Regulations with the following modifications.

(2) For subsection (1), substitute—

“(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a person is failing to comply with a provision of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013 specified in paragraph (1A), the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the officer’s grounds for believing that the person is failing to comply with the relevant provision;
- (b) specify the matters which constitute the person’s failure so to comply;
- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period as may be specified in the notice.

(1A) Any EU provision specified in the first column of Table 2 of—

(13) OJ No. L267, 2.10.2012, p.1.

- (a) Schedule 1;
- (b) Schedule 2;
- (c) Schedule 3; or
- (d) Schedule 4; or
- (e) regulation 13(2)".

Appeal against improvement notice – application of subsections (1) and (6) of sections 37 and section 39 of the Food Safety Act 1990

8.—(1) Subsections (1) and (6) of section 37 of the Act (appeals) apply for the purposes of these Regulations with the following modifications—

- (a) for subsection (1), substitute—

“(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve an improvement notice under section 10(1), as applied and modified by regulation 7 of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013, may appeal to a magistrates court.”; and

- (b) in subsection (6), for “(3) or (4)”, substitute “(1), (3) or (4)”.

PART 3

Extraction solvents

Controls on extraction solvents

9. In this Part any reference to a numbered Article or Annex is a reference to that Article or Annex to Directive 2009/32.

10. The provisions of this Part do not apply to any extraction solvent —

- (a) used in the production of any food additives, vitamins or any other nutritional additives, unless such food additives, vitamins or other nutritional additives are listed in Annex I; or
- (b) intended for export outside the European Union.

11. In this Part “permitted extraction solvent” means —

- (a) an extraction solvent that —
 - (i) is listed in Annex I,
 - (ii) is used in accordance with the conditions of use and within any maximum residue limits specified in that Annex,
 - (iii) does not contain a toxicologically dangerous amount of any element or substance,
 - (iv) subject to any exceptions deriving from specific purity criteria, does not contain more than 1 mg/kg of arsenic or more than 1 mg/kg lead, and
 - (v) meets the requirements of Article 3(c) as regards purity criteria; or
- (b) water to which substances regulating acidity or alkalinity may have been added; or
- (c) food substances which possess solvent properties.

12. No person may use as an extraction solvent in the production of food any extraction solvent that is not a permitted extraction solvent.

13.—(1) No person may place on the market —

- (a) an extraction solvent that is not a permitted extraction solvent; or
 - (b) any food having in it or on it an added extraction solvent that is not a permitted extraction solvent.
- (2) No person may place on the market an extraction solvent that does not meet the requirements of regulation 14.

14.—(1) Subject to paragraph (2), the following information must appear on the packaging, container or label —

- (a) the commercial name as indicated in Annex I;
 - (b) a clear indication that the material is of a quality suitable for use for the extraction of food or food ingredients;
 - (c) a reference by which the batch or lot may be identified;
 - (d) the name or business name and address of the manufacturer or packer or of a seller established in the territory of the EU;
 - (e) the net quantity given as units of volume; and
 - (f) if necessary, the special storage conditions or conditions of use.
- (2) The particulars specified in subparagraphs (c), (d), (e) and (f) of paragraph (1) may alternatively appear on the trade documents relating to the batch or lot which are to be supplied with, or prior to, the delivery.
- (3) The information specified in paragraph (1) must be easily visible, clearly legible and indelible.
- (4) The information specified in paragraph (1) may be provided in more than one language, but at least one of those languages must be easily understood by the purchaser unless other measures have been taken to ensure that the purchaser is informed of the specified information.

PART 4

Administration and enforcement

Competent authorities

15. The competent authority for the purpose of Article 7 of Regulation 2065/2003 is the Food Standards Agency.

Enforcement authorities

16. It is the duty of each food authority within its area or district to execute and enforce these Regulations and the EU Regulations.

Offences and penalties

- 17.**—(1) Any person who contravenes regulation 12 or 13(1) commits an offence.
- (2) Any person guilty of an offence under regulation 3, 4, 5, 6 or 17(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Condemnation of food

18. Where any food is certified by a food analyst as being food which it is an offence to place on the market, that food shall be treated for the purposes of section 9 of the Act (under which food

may be seized and destroyed under an order of a justice of the peace) as failing to comply with food safety requirements.

Application of various provisions of the Food Safety Act 1990

19.—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part of it is to be construed as a reference to these Regulations —

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence)(**14**) with the modification that —
 - (i) subsections (2) to (4) shall apply in relation to an offence under regulation 3, 4, 5, 6, 7(4) or 17(1) as they apply in relation to an offence under section 14 or 15, and
 - (ii) in subsection (4) the references to “sale” are deemed to include references to “placing on the market”;
- (c) section 30(8) (which relates to documentary evidence);
- (d) section 35(1) (punishment of offences)(**15**), in so far as it relates to offences under section 33(1) as applied by paragraph (3)(b);
- (e) section 35(2) and (3)(**16**), in so far as it relates to offences under section 33(2) as applied by paragraph (1)(c);
- (f) section 36 (offences by bodies corporate); and
- (g) section 36A (offences by Scottish partnerships)(**17**).

(2) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act is to be construed as including a reference to the EU Regulations and these Regulations —

- (a) section 3 (presumption that food is intended for human consumption) with the modification that the references to “sold” and “sale” are deemed to include references to “placed on the market” and “placing on the market” respectively;
- (b) section 33(1) (obstruction etc. of officers);
- (c) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” is deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (b); and
- (d) section 44 (protection of officers acting in good faith).

(3) Section 34 of the Act (time limit for prosecutions) applies to offences under these Regulations as it applies to offences punishable under section 35(2) of the Act.

(14) Section 21 was amended by [S.I. 2004/3279](#).

(15) Section 35(1) is amended by the Criminal Justice Act 2003 (c.44), Schedule 26, paragraph 42, from a date to be appointed.

(16) Section 35(3) was amended by [S.I. 2004/3279](#).

(17) Section 36A was inserted by the Food Standards Act 1999 (c.28), Schedule 5, paragraph 16.

PART 5

General

Consequential and other amendments

20. In regulation 2(1) (interpretation) of the Food Labelling Regulations 1996⁽¹⁸⁾, in the definition of “the additives regulations” omit the expression “the Food Additives (Wales) Regulations 2009,”.

Revocations

21. The instruments listed in the first column of Schedule 5 are revoked to the extent specified in the second column.

7 October 2013

Mark Drakeford
Minister for Health and Social Services, one of
the Welsh Ministers

⁽¹⁸⁾ S.I. 1996/1499. Relevant amending instruments are S.I. 2010/2817 and 2012/2619.